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January 26, 2023

VIA ECF

The Honorable Jesse M. Furman
United States District Judge
United States District Court for the
Southern District of New York
40 Centre Street
New York, New York 10007

Re: *UMB Bank, N.A. v. Bristol-Myers Squibb Co.*, No. 21 Civ. 4897 (JMF)

Dear Judge Furman:

Counsel for Plaintiff UMB Bank, N.A., as trustee under the Contingent Value Rights Agreement dated as of November 20, 2019 (“UMB”), and defendant Bristol-Myers Squibb Co. (“BMS”) jointly respectfully submit this status update in accordance with the Civil Case Management Plan and Scheduling Order (“Scheduling Order”) entered by the Court on July 26, 2022 (ECF No. 39).

1. Deadlines

Under the Scheduling Order, the deadline for the parties to complete fact discovery is October 26, 2023, and the deadline for the parties to complete expert discovery is March 29, 2024.

2. Outstanding Motions

There are no outstanding motions.

3. Discovery

Each party has served requests for production on the other party and has responded to those requests. The parties also each served and responded to first sets of interrogatories on the schedule provided for in the Scheduling Order. The parties have engaged in periodic communications (by teleconference and email/letter correspondence) regarding the scope of discovery and have reached agreement on most issues to date.

Both parties have begun rolling productions of responsive documents. UMB anticipates that it will substantially complete its document production within two weeks from the date of this

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submission. To date, BMS has made thirteen installments in its rolling production of documents amounting to 216,720 documents and 1,597,734 pages in response to UMB's requests. BMS's review and production of documents is ongoing, and it anticipates further work will be needed before substantial completion, in part because UMB has pressed BMS to expand the scope of its search for responsive materials through additional search terms and custodians, which the parties have been discussing while BMS continues its rolling production. Each of the parties has served subpoenas *duces tecum* on multiple non-parties. At this time, there are no outstanding issues for the Court to address regarding third-party discovery.

UMB recently proposed that BMS agree to respond to interrogatories that would otherwise require UMB to seek leave from the Court. Specifically, UMB has proposed to serve targeted interrogatories to identify "comparator" products to those at issue in this case for purposes of discovery into BMS's "diligent efforts" to achieve the milestones for the relevant products. UMB's position is that because the "diligent efforts" provision in the CVR Agreement defines the standard of conduct "of a Person" by reference to the "resources normally used by such Person in the exercise of [] reasonable business discretion relating to the research, development or commercialization of a product, that is of similar market potential at a similar stage in its development or product life," discovery will be necessary into the potential universe of "comparator" products that inform that standard for the therapies at issue in this case. BMS is skeptical that serving the proposed interrogatories at this time would "streamline" discovery (in addition to other issues that BMS believes are raised by UMB's assertions). If the parties cannot reach agreement on this issue, UMB intends to seek leave of court under Section 9(c) of the Scheduling Order to serve targeted interrogatories to identify "comparator" products to those at issue in this case. BMS reserves all of its rights and arguments in response to any such motion.

The parties have had continued discussions on the scope of anticipated discovery and the presumptive limits on depositions and interrogatories under the Federal Rules of Civil Procedure. UMB continues to anticipate that it will likely seek to take more than the presumptive limit of ten depositions provided for under Rule 30(a)(2)(A)(i). BMS reserves all rights in that regard.

If the parties cannot reach agreement on the appropriate number of depositions or other discovery issues, then they will raise those issues with the Court when the need arises.

4. Prior Settlement Discussions

There have been no settlement discussions. As previously reported, the parties discussed the topic during the initial conference under Rule 26(f) of the Federal Rules of Civil Procedure on July 26, 2021.

5. Alternative Dispute Resolution

At the initial status conference with the Court on July 22, 2022, both parties informed the Court that it was then premature for the parties to discuss the possibility of mediation. Both parties continue to believe that discussion of mediation is premature but believe private mediation is likely to be the most appropriate approach to mediation in this case. They will discuss the potential for

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such a mediation to be held before the conclusion of fact discovery. Both parties would object to mediation before a United States Magistrate Judge to whom any aspects of the case have been referred for other rulings.

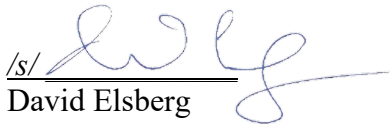
6. Trial

UMB demanded a jury trial in its Complaint (ECF No. 1). The parties anticipate that a trial, if needed, would require two to three weeks.

7. Summary Judgment

UMB anticipates filing a summary judgment motion after the close of all discovery. BMS also anticipates filing a summary judgment motion at an appropriate time.

Respectfully submitted,



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